

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2003-187-T – ORDER NO. 2004-331  
JULY 16, 2004

IN RE: Application of McCorquodale Transfer, Inc.	) ORDER GRANTING
for a Class E Certificate of Public	) RECONSIDERATION
Convenience and Necessity	) AND APPROVING CLASS
	) E CERTIFICATE OF
	) PUBLIC CONVENIENCE
	) AND NECESSITY

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Petition for Reconsideration and/or Rehearing filed by McCorquodale Transfer, Inc. (“McCorquodale” or the “Company”) seeking reconsideration of Commission Order No. 2003-633 or in the alternative a rehearing. In Order No. 2003-633, the Commission, following a hearing, denied McCorquodale’s application for a Class E Certificate of Public Convenience and Necessity (“Certificate of PC&N”) to transport household goods between points and places in Charleston, Berkeley, and Dorchester Counties, South Carolina. For the reasons stated herein, the Commission grants reconsideration and approves McCorquodale’s application for a Class E Certificate of PC&N.

In Order No. 2003-633, the Commission found that McCorquodale did not meet the requisite criteria of being “fit” to properly perform the services for which it sought authority. The Commission’s determination was based on the fact that the evidence of

record showed that McCorquodale had allowed its Certificate of Authority in Alabama to be revoked due to failure to file evidence of insurance with the Alabama Public Service Commission.

By its Petition, McCorquodale asserts several arguments with regard to the Commission's determination that McCorquodale's failure to file evidence of insurance in Alabama should not result in denial of authority in South Carolina. First, McCorquodale asserts that the Company demonstrated its fitness to provide household goods moving services within South Carolina by affirming and certifying that the Company would abide by the Rules and Regulations of the Commission. According to McCorquodale, its experience in Alabama with evidence of insurance not being filed with the Alabama Public Service Commission has made McCorquodale more aware of and sensitive to its legal obligations. Further, McCorquodale asserts the Commission's decision in Order No. 2003-633 would prohibit any applicant subject to a previous revocation or sanction in any jurisdiction from becoming licensed in South Carolina.

McCorquodale also argues that it cured the revocation of its Alabama authority. McCorquodale points to late-filed exhibits from the hearing that reveal that the Alabama Public Service Commission subsequently reissued McCorquodale's authority in Alabama after the hearing held in South Carolina. The record from the hearing showed that McCorquodale did not realize that its Alabama authority had been revoked until just prior to the hearing before this Commission when McCorquodale began preparations for the hearing. In fact, the revocation was brought to the attention of McCorquodale by counsel for the intervenor in this proceeding. Even though McCorquodale's Alabama authority

was revoked for failure to file the Form E and Form H proof of insurance, McCorquodale provided evidence that the Company actually maintained the requisite insurance coverage during the period when the proof of insurance was not on file with the Alabama Public Service Commission. Thus the evidence of record shows that at no time was McCorquodale actually without insurance. It should also be noted that the responsibility to file the requisite Form E and Form H lies with the insurance carrier; the insured cannot file the Form E or Form H. However, we do reiterate that this Commission is of the opinion that the responsibility to see that compliance with Commission Rules and Regulations does in fact rest with the party holding authority. McCorquodale points out that the Alabama Public Service Commission did not punish McCorquodale for the fact that the appropriate insurance filing was not made against McCorquodale and that the Alabama Public Service Commission reissued McCorquodale's authority upon the filing of the requisite proof of insurance. McCorquodale argues that because the Alabama Public Service Commission did not punish McCorquodale for its "mistake" that neither should this Commission.

McCorquodale also asserts that its actions following the discovery that the Alabama authority was revoked should provide evidence that McCorquodale takes seriously its regulatory obligations and goes to show its "fitness" to operate in the regulatory environment. McCorquodale asserts that the record demonstrates that it does take seriously its regulatory obligations as McCorquodale undertook to correct a mistake in a rapid and thorough manner and that such actions should be viewed as McCorquodale's commitment to operate in compliance with the law.

Finally, McCorquodale argues that it can do nothing more to cure its mistake in Alabama. McCorquodale points out that while it did operate in Alabama for a period of time due to the revocation of the Alabama authority for failure to file proof of insurance, McCorquodale never operated without having the requisite insurance. The mistake was that the evidence of that insurance was never filed with the Alabama Public Service Commission by the insurance carrier and that McCorquodale through either inadvertence or mistake did not receive the notice from the Alabama Public Service Commission with regard to the revocation. McCorquodale asserts that because it cannot do anything to change the past with regard to the revocation of authority in Alabama, revocation in South Carolina is a particularly harsh penalty. McCorquodale suggests that the Commission's finding that McCorquodale is not "fit" due to that past non-compliance in Alabama would prevent any carrier with a mistake, even a subsequently corrected mistake, from ever being certified in South Carolina.

After a full examination of McCorquodale's Petition, the Commission finds good cause to grant reconsideration of McCorquodale's Application. As the evidence of record supports that McCorquodale was not without insurance coverage during the time McCorquodale's authority was revoked in Alabama, the Commission will reconsider its determination in Order No. 2003-633 that McCorquodale has not demonstrated that it is "fit" to provide its services within South Carolina.

**APPLICABLE LAW**

In determining whether an applicant has demonstrated that it should be awarded a Certificate of PC&N to transport household goods within South Carolina, the Commission is guided by the following applicable statutes and regulations:

1. S.C. Code Ann. § 58-23-20 (Supp. 2003) provides, in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2003) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2003) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and

(2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 2003) defines "Certificate of PC&N" as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 2003) defines "Common Carrier by Motor Vehicle" as "any person<sup>1</sup> which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

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<sup>1</sup> 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

8. A “Class E Motor Carrier” is defined in 26 S.C. Regs. 103-114 (Supp. 2003) as “a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

9. 26 S.C. Code Regs. 103-133 (Supp. 2003) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to be appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.<sup>2</sup> If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending

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<sup>2</sup> By Commission Order No. 1999-654, dated September 15, 1999, (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by “small carrier” applicants in providing appropriate shipper witnesses. By Order No. 2000-024, dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654, to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.

- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2003) is entitled "When Hearing May Be Held" and provides in relevant part that "[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served."

#### **EVIDENCE OF RECORD**

The hearing on McCorquodale's Application was held on September 11, 2003, at 2:30 P.M. in the offices of the Commission. Testifying on behalf of McCorquodale were Bartley R. McCorquodale, President of the Company, and Bryan R. Terrell. Intervenor



Azalea Moving & Storage, Inc. (“Azalea”) appeared and offered the testimony of Jay Cook.

Mr. McCorquodale testified that he started his company in 1996 while in college. According to Mr. McCorquodale, his father owned a furniture store, and Mr. McCorquodale began moving furniture for his father. Currently, McCorquodale primarily operates as a residential delivery service for stores that do not have an in-house delivery system. In Alabama, McCorquodale handles shipments for Southern Accents, Southern Living, Coastal Living, Pottery Barn, and Restoration Warehouse. The Company presently has seventeen straight trucks and 37 employees in Birmingham, Alabama, which is where the Company’s home office is located. Many of the employees of McCorquodale are college friends of Mr. McCorquodale, and Mr. McCorquodale testified that most of his employees are college graduates. If granted authority in South Carolina, Mr. McCorquodale stated that he would move two motor vehicles, a 24 foot box truck, and a 14 foot truck to the Charleston area for use in the business in South Carolina. The initial focus of the business will be to provide moving services to stores that do not have in-house delivery capabilities, but that McCorquodale will handle some residential moves. Additionally, Mr. Terrell will be operating the Charleston office for McCorquodale.

Mr. McCorquodale testified that while his Company provides moving services for stores without in-house delivery capabilities, his Company also provides residential moving services when requested. Thus, the need to obtain a Class E Certificate of PC&N. Mr. McCorquodale stated that his experience in Alabama has been that after delivering

furniture bought from one of the stores for whom the Company makes deliveries, the customer will ask for the Company to move furniture to another location or to storage. In order to accommodate these requests, the Company requires a Class E Certificate of PC&N. Also, the Company has received requests for residential moves from former customers when those customers have later required moving services.

McCorquodale provided proof of insurance for its South Carolina operations. According to the record, McCorquodale carries two million dollars in general aggregate liability insurance, with one million dollars coverage per accident, and cargo insurance of one hundred thousand dollars per truck. Mr. McCorquodale testified that there are no outstanding judgments pending against the Company, and he also testified that his Company would operate in compliance with all applicable laws governing for-hire motor carrier services. Further, if granted authority, McCorquodale proposes to join the South Carolina Tariff Bureau.

Mr. McCorquodale presented testimony on the revocation of his Company's authority by the Alabama Public Service Commission. According to the record, Mr. McCorquodale was not aware of the revocation of that authority until his counsel was advised by counsel for the intervenor that the Alabama authority had been revoked. Mr. McCorquodale sponsored exhibits from the Federal Motor Carrier Safety Administration which indicated that the Company had insurance in effect continuously despite the revocation in Alabama. According to Mr. McCorquodale, he never received any information from the Alabama Public Service Commission that proof of insurance had not been received by the Alabama Public Service Commission or that the authority to

operate in Alabama had been revoked. Mr. McCorquodale testified that during the period of time in question that the Company maintained insurance. Further, he acknowledged that it is his responsibility to make sure that regulatory laws are complied with. Mr. McCorquodale also testified that he had immediately applied for reinstatement of the Alabama authority and would provide evidence of the reinstatement as soon as it was received. Following the hearing, McCorquodale did in fact provide copies of orders from the Alabama Public Service Commission indicating that the authority had been reinstated.

Also testifying on behalf of McCorquodale was Bryan R. Terrell. Mr. Terrell will be operating the Charleston branch of McCorquodale if the Company receives authority to operate in South Carolina. Mr. Terrell testified that he has moved to the Charleston area and recognized a need for a moving service such as that offered by McCorquodale. According to Mr. Terrell, he has personally seen the growth in the Charleston area and believes that the growth in that area would support another moving service.

Mr. Jay Cook, President of Azalea, testified in opposition to McCorquodale's Application. According to Mr. Cook, he started his business in 1982. Mr. Cook is the third generation in his family to work in the moving business and he worked for his grandfather and father before opening his own business. Mr. Cook testified that 90% of his business originates in the low-country, and he further testified that his company would like to handle and is capable of handling the types of moves that McCorquodale seeks to make. Further, Mr. Cook testified that Azalea has 18 trucks and approximately 35 employees. Mr. Cook also testified that he is unable to keep all his employees working throughout the year and that at some points during the year he cannot keep all of his

employees on the payroll. Mr. Cook also testified that Azalea's revenues have been flat for the past few years, and he opined that certification of McCorquodale would hurt his business. Mr. Cook further opined that sufficient movers exist in the Charleston area to handle the moves in the area.

### **FINDINGS OF FACT**

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. McCorquodale is a moving service enterprise which desires to provide moving services of household goods within and between points and places in Charleston, Berkley, and Dorchester Counties, South Carolina.

2. McCorquodale is fit, willing, and able to provide and properly perform the services which it seeks to provide. "Fitness" has been demonstrated by (1) evidence of experience by Mr. McCorquodale in the moving industry and (2) that McCorquodale will operate in compliance with all statutes and regulations pertaining to for-hire motor carrier operations. Further, the record contains testimony and certification (1) that McCorquodale's principal is familiar with the regulations and statutes governing for-hire motor carrier services and (2) that there are no outstanding judgments pending against McCorquodale. "Able" was demonstrated by the evidence of record which reveals that Mr. McCorquodale has several years of experience in the moving business and is familiar with the operation of such businesses as well as the state and federal statutes and regulations regulating for-hire motor carrier services. The evidence indicates that McCorquodale possesses the financial wherewithal necessary to establish and conduct the

for-hire motor carrier operations in South Carolina for which the Company seeks authority. Further, the record shows that McCorquodale can obtain and has obtained the motor equipment necessary to provide the services as well as the requisite minimum insurance as required by this Commission. “Willingness” was demonstrated by the filing of the Application and the testimony of Mr. McCorquodale indicating desire to undertake this business venture in South Carolina.

3. The services proposed by McCorquodale are required by the public convenience and necessity. We find that the testimony and evidence presented on behalf of the Company clearly established that the public convenience and necessity warrant the issuance of the permit requested by the Applicant in the Charleston, Berkley, and Dorchester County area of South Carolina. We find the evidence of public convenience and necessity provided by the Applicant to be credible.

4. Due to the revocation of McCorquodale’s authority in Alabama, the Commission finds sufficient cause to require increased monitoring of the Company for a period of time. Further, the Commission finds that McCorquodale consented to such increased monitoring in its Petition.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that McCorquodale has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.2003).

2. The Commission concludes that McCorquodale has sufficiently demonstrated through its presentation that the public convenience and necessity in the area in which McCorquodale proposes to serve requires the services proposed by the Application. In determining the issue of the present state of public convenience and necessity, we did consider the testimony of Jay Cook, President of Azalea. Mr. Cook testified that revenues for his company were “flat” for the past two years, and Mr. Cook opined that increased competition from the Applicant for local moves would endanger Azalea’s business. Mr. Cook further testified that as a result of business for Azalea being “down” that he was unable to keep all of his employees working.

While Mr. Cook’s testimony is relevant to these proceedings, we are aware of the case law on the issue of loss of revenues to other carriers. Loss of income was specifically addressed in Welch Moving and Storage v. S. C. Public Service Commission, 391 S.E.2d 556 (S.C. 1990). In the Welch case, the South Carolina Supreme Court addressed the issue of loss of income by certified carriers opposing an applicant seeking certification and stated that “[a]lthough the potential effect of additional competition should the Commission grant the application in this case is relevant, that potential detriment to income cannot in itself defeat an application for additional services. Welch Moving and Storage v. S. C. Public Service Commission, 391 S.E.2d 556 (S.C. 1990).

3. Based on the conclusions above, that McCorquodale has demonstrated that it meets the requirements of fit, willing, and able and that McCorquodale has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and

Necessity should be granted and that McCorquodale should be authorized to provide moving services within the following operating scope:

Household Goods, As Defined in R. 103-210(1):  
Between points and places in Charleston, Berkley, and  
Dorchester Counties, South Carolina.

This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

4. Due to the revocation of McCorquodale's authority in Alabama, the Commission concludes that McCorquodale should be subject to increased monitoring by the Commission Staff for a period of time. Therefore, the Commission orders that the Staff audit McCorquodale one time during the first six months of operation after receiving its certificate to operate and report any infractions to the Commission. Further, if any infractions are found during the audit, then the Staff shall apprise the Commission of the infractions and shall conduct a second audit during the succeeding six months. The Commission further orders that the Staff immediately report to the Commission any complaints received by the agency concerning McCorquodale's operations for a period of one year following certification.

IT IS THEREFORE ORDERED:

1. That the Application of McCorquodale Transfer, Inc. for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved for authority to transport household goods between points and places in Charleston, Berkley, and Dorchester Counties, South Carolina.

2. McCorquodale shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to McCorquodale Transfer, Inc. authorizing the motor carrier services granted herein.

4. Failure of McCorquodale either (1) to complete the certification process by complying with the Commission requirements of causing to be filed with the Commission proof of appropriate insurance, and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

5. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

6. Due to the revocation of McCorquodale's authority in Alabama, the Commission finds sufficient cause to require increased monitoring of the Company for a period of time. Therefore, the Commission orders that the Staff audit McCorquodale one



time during the first six months of operation after receiving its certificate to operate and report any infractions to the Commission. Further, if any infractions are found during the audit, then the Staff shall apprise the Commission of the infractions and shall conduct a second audit during the succeeding six months. The Commission further orders that the Staff immediately report to the Commission any complaints received by the agency concerning McCorquodale's operations for a period of one year following certification.

7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/  
Randy Mitchell, Chairman

ATTEST:

/s/  
Bruce F. Duke, Executive Director

(SEAL)